

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK

TIMOTHY WILLIAMS,

Plaintiff,

-v.-

9:06-CV-0936
(GLS)(DEP)

MID-STATE CORRECTIONAL FACILITY, *et al.*,

Defendants.

APPEARANCES:

TIMOTHY WILLIAMS
Plaintiff, *pro se*
03-A-2602

GARY L. SHARPE, U.S. DISTRICT JUDGE

ORDER

The Clerk has sent to the Court a civil rights complaint, together with an application to proceed *in forma pauperis*, filed by Timothy Williams ("plaintiff" or "Williams"), who is currently incarcerated at Sing Sing Correctional Facility.

In his *pro se* complaint, plaintiff alleges that the defendants were deliberately indifferent to his serious medical needs and retaliated against him for filing grievances. Plaintiff seeks substantial monetary damages. For a more complete statement of plaintiff's claims, reference is made to the entire complaint.

In his complaint, plaintiff has sued the Mid-State Correctional Facility and the Central New York Psychiatric Center. However, both institutions are arms of the state for Eleventh Amendment purposes and are, therefore, absolutely immune from plaintiff's

claims for monetary damages in this lawsuit. *Will v. Michigan Dep't of Police*, 491 U.S. 58, 71 (1989); *Waxter v. Roberts et al.*, 98-CV-0342 (N.D.N.Y. Jan. 19, 1999) (Kahn, J.) at docket no. 19 (adopting Report-Recommendation of Magistrate Judge Gustave J. DiBianco that recommended dismissing DOCS from lawsuit due to Eleventh Amendment immunity). Therefore, Mid-State Correctional Facility and Central New York Psychiatric Center are dismissed as defendants to this lawsuit.

As to plaintiff's *in forma pauperis* application, after reviewing the entire file, the Court finds that the plaintiff may properly proceed with this matter *in forma pauperis*.

WHEREFORE, it is hereby

ORDERED, that the Mid-State Correctional Facility and Central New York Psychiatric Center are dismissed as defendants to this action, and it is further

ORDERED, that plaintiff's *in forma pauperis* application is granted.¹ The Clerk shall issue summonses and forward them, along with copies of the complaint, to the United States Marshal for service upon the named defendants. The Clerk shall forward a copy of the summons and complaint by mail to the Office of the Attorney General for the State of New York, together with a copy of this Order, and it is further

ORDERED, that the Clerk provide the Superintendent of the facility, designated by plaintiff as his current location, with a copy of plaintiff's authorization form, and notify the official that this action has been filed and that plaintiff is required to pay the entire statutory filing fee of \$350.00 pursuant to 28 U.S.C. § 1915, and it is further

¹ Plaintiff should note that although the application to proceed *in forma pauperis* has been granted, plaintiff will still be required to pay fees that he may incur in this action, including copying and/or witness fees.

ORDERED, that the Clerk provide a copy of plaintiff's authorization form to the Financial Deputy of the Clerk's Office, New York, and it is further

ORDERED, that a response to plaintiff's complaint be filed by the defendants or their counsel as provided for in the Federal Rules of Civil Procedure after service of process on the defendants, and it is further

ORDERED, that all pleadings, motions and other documents relating to this action be filed with the Clerk of the United States District Court, Northern District of New York, 7th Floor, Federal Building, 100 S. Clinton St., Syracuse, New York 13261-7367.

Any paper sent by a party to the Court or the Clerk must be accompanied by a certificate showing that a true and correct copy of same was mailed to all

opposing parties or their counsel. Any document received by the Clerk or the

Court which does not include a certificate of service showing that a copy was

served upon all opposing parties or their attorneys will be returned, without

processing. Plaintiff must comply with any requests by the Clerk's Office for any documents that are necessary to maintain this action, including an original summons showing a complete title of this action, a civil cover sheet, sufficient copies of completed USM-285 forms and copies of his complaint (along with any exhibits attached thereto) for service upon the defendants. All parties must comply with Local Rule 7.1 of the Northern District of New York in filing motions, which must be returnable before the assigned Magistrate Judge with proper allowance for notice as required by the Rules.

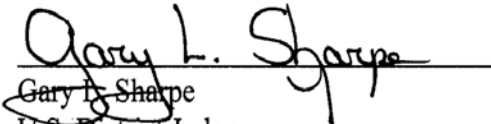
Plaintiff is also required to promptly notify the Clerk's Office and all parties or their counsel of any change in plaintiff's address; his failure to do same will

result in the dismissal of this action. All motions will be decided on submitted papers without oral argument unless otherwise ordered by the Court, and it is further

ORDERED, that the Clerk serve a copy of this Order on the plaintiff by regular mail.

IT IS SO ORDERED.

DATED: October 5, 2006
 Albany, New York


Gary L. Sharpe
U.S. District Judge